BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JEROLD ALLEN THARP Claimant	}
VS.	Docket No. 100 007
LEARJET INC.) Docket No. 199,997
Respondent AND	
WILLIS CORROON Insurance Carrier	}

ORDER

Claimant appeals from a Preliminary Hearing Order dated August 24, 1995, wherein Administrative Law Judge Shannon S. Krysl denied claimant benefits finding claimant had failed to prove by a preponderance of the credible evidence that his herniated disc occurred at work rather than at home.

ISSUES

Whether claimant met with accidental injury arising out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The above issue is one enumerated in K.S.A. 44-534a as subject to review on appeal from a preliminary hearing and this matter is properly before the Appeals Board.

The finding by the Administrative Law Judge that claimant failed to prove that his herniated disc occurred at work, thus finding that claimant's accidental injury did not arise out of and in the course of his employment is supported by the evidence.

Claimant alleged injury to his back on January 6, 1995. A medical report submitted into evidence dated December 28, 1994, indicates claimant injured his back while lifting the cover on his patio pool at home. This injury resulted in low back pain with radiculopathy into his right leg. These symptoms are identical to symptoms alleged by claimant to have resulted from the injury claimed on January 6, 1995.

The medical report of December 28, 1994, indicates the initial back injury occurred while pulling a tarp off of a swimming pool. Claimant's first contact with respondent, on

January 19, 1995, further supports a finding that claimant injured his back while pulling a cover off of his pool over the Christmas holidays. This report also indicates claimant was suffering right leg pain at that time.

Claimant did not allege accidental injury to respondent as arising out of and in the course of his employment until January 23, 1995.

The Appeals Board finds based upon the evidence presented that claimant has failed to prove accidental injury arising out of and in the course of his employment and the Order denying claimant benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Shannon S. Krysl dated August 24, 1995, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.
Dated this day of November 1995.
BOARD MEMBER
BOARD MEMBER
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BOADS AFAIRE
BOARD MEMBER

c: M. Steven Wagle, Wichita, Kansas Edward D. Heath, Jr., Wichita, Kansas Shannon S. Krysl, Administrative Law Judge Philip S. Harness, Director